Chor Phaik Har v Farlim Properties Sdn Bhd

FEDERAL COURT (PENANG) — CIVIL APPEAL NO 02-333 OF 1993
EDGAR JOSEPH JR, MOHAMED DZAIDDIN FCJJ AND ABU MANSOR JCA
5 JULY 1997

Succession *— Administration — Sale of land — Sale agreement entered into by beneficiaries of an unadministered estate — Whether beneficiaries on intestacy of an unadministered estate of a deceased person had title or interest in the property before administration was completed — Whether sale was valid*

Land Law *— Sale of land — Validity of agreement — Sale by beneficiaries of an unadministered estate — Beneficiaries of estate entitled to undivided shares of the land — Whether beneficiaries on intestacy of an unadministered estate of a deceased person had title or interest in the property before administration was completed — Whether beneficiaries could have covenanted to convey title to the purchasers under the sale agreements*

Land Law *— Restraints on dealings — Caveats — Application for removal of caveat — Application by purchaser who purportedly bought land from beneficiaries of an unadministered estate — Whether there were sufficient grounds in law or fact for treating purchaser as person claiming an interest in the lands as would make them aggrieved by the existence of the caveat — National Land Code 1965 s 327*

By an agreement dated 4 January 1943 ('the 1943 agreement') between Chor Bah Say ('the deceased') and Choong Lye Hock Estate Sdn Bhd ('the company'), the deceased acquired ¾ undivided shares in Ayer Itam Estate, which included two pieces of land ('the lands'). The deceased died intestate on 9 November 1949. Upon his death, his interest under the 1943 agreement devolved to and became vested in his estate. The appellant was the remaining direct beneficiary of the deceased's estate.

By two sale and purchase agreements ('the sale agreements') between the company and the executors of the beneficiaries of the estate of the deceased on the one part and the respondents on the other part, the former agreed to sell the lands to the latter for RM32,006,000. The appellant refused to execute the sale agreements. The appellant then entered a private caveat against the lands. The respondents applied to the High Court for the removal of the caveat under s 327 of the National Land Code 1965 ('the Code') submitting that by virtue of the sale agreements, they were 'persons aggrieved' and could apply to remove the caveat. The learned judge granted the respondents' application. The appellant appealed.

The appellant submitted that the respondents could not rely on the sale agreements to justify their status as an aggrieved party because the sale agreement had no validity since the estate of the deceased was unadministered at the date of the sale agreements. He submitted that in law, a beneficiary of an unadministered estate had no title or interest in the property of the deceased person before

A administration was completed. Therefore, so long as the estate of the deceased remained unadministered, the beneficiaries did not have and could not acquire any title to the ¾ undivided shares of the lands at the date of the sale agreements and thus, the beneficiaries could not have covenanted to convey such title to the respondents under the sale agreements. The respondent argued otherwise and submitted B that the concept of a residuary beneficiary was limited to the estate of a testate deceased, and did not apply to a beneficiary on intestacy where the interest of a beneficiary of an intestate estate was predetermined by law.

C **Held**, allowing the appeal:

It could be concluded that in law, a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate D estate.

Having regard to the circumstances of the whole case, it was clear that at the date of the execution of the sale agreements, the administration of the estate of the deceased had not been completed. It followed that until his estate had been fully administered by the E administrators and distribution made according to law, the beneficiaries had no interest or property in the estate of the deceased so as to give them any title to the lands. Therefore, the beneficiaries could not have covenanted to convey any title to the respondents. In the result, the respondents could not rely on the sale agreements to justify their status as 'person aggrieved' under s 327 of the Code. For F the above reasons, the respondents had not satisfied the court that there were sufficient grounds in law or fact for treating them as persons claiming an interest in the lands as would, if it were established, make them aggrieved by the existence of the caveat (see pp 196B and 197F–H); *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 followed.

G

[Bahasa Malaysia summary

Melalui suatu perjanjian bertarikh 4 Januari 1943 ('perjanjian 1943') di antara Chor Bah Say ('si mati') dan Choong Lye Hock Estate Sdn H Bhd ('syarikat tersebut'), si mati memperolehi ¾ bahagian yang tidak dibahagikan dalam Estet Ayer Hitam, yang termasuk dua bidang tanah ('tanah tersebut'). Si mati meninggal dunia tanpa meninggalkan wasiat pada 9 November 1949. Atas kematiannya, kepentingannya di bawah perjanjian 1943 diturunkan dan diletakhak kepada harta pusakanya. Perayu merupakan benefisiari langsung yang tinggal I kepada harta pusaka si mati.

Melalui dua perjanjian jual beli ('perjanjian jual beli tersebut') di antara syarikat tersebut dan wasi kepada benefisiari-benefisiari harta pusaka si mati pada satu pihak dan penentang pada satu pihak yang

lain, syarikat tersebut dan wasi kepada benefisiari-benefisiari harta pusaka si mati bersetuju untuk menjual tanah tersebut kepada penentang dengan harga RM32,006,000. Perayu enggan melaksanakan perjanjian jual beli tersebut. Perayu kemudiannya memasukkan kaveat terhadap tanah tersebut. Penentang memohon kepada Mahkamah Tinggi untuk membatalkan kaveat itu di bawah s 327 Kanun Tanah Negara 1965 ('Kanun tersebut') dengan menghujahkan bahawa memandangkan perjanjian jual beli tersebut, mereka adalah 'orang yang terkilan' dan boleh memohon untuk membatalkan kaveat itu. Hakim yang arif membenarkan permohonan penentang. Perayu membuat rayuan.

Perayu menghujahkan bahawa penentang tidak boleh bergantung kepada perjanjian jual beli tersebut untuk menjustifikasikan status mereka sebagai pihak yang terkilan kerana perjanjian jual beli tersebut tidak sah kerana harta pusaka si mati tidak ditadbirkan pada tarikh perjanjian jual beli tersebut. Beliau menghujahkan bahawa mengikut undang-undang, benefisiari kepada harta pusaka yang tidak ditadbirkan tidak mempunyai hakmilik atau kepentingan dalam harta si mati sebelum pentadbiran lengkap. Oleh itu, selagi harta pusaka si mati tidak ditadbirkan, benefisiari-benefisiari tidak mempunyai dan tidak boleh memperolehi apa-apa hakmilik kepada ¾ bahagian yang tidak dibahagikan dalam tanah tersebut pada tarikh perjanjian jual beli tersebut dan dengan itu, benefisiari-benefisiari itu tidak mungkin mewaadkan untuk memindahkan hakmilik sedemikian kepada penentang di bawah perjanjian jual beli tersebut. Penentang menghujahkan sebaliknya dan menegaskan bahawa konsep benefisiari bakian adalah terhad kepada harta pusaka si mati yang meninggalkan wasiat, dan tidak terpakai kepada benefisiari atas kematian tak berwasiat di mana kepentingan seseorang benefisiari terhadap harta pusaka tanpa wasiat adalah ditentukan oleh undang-undang.

Diputuskan, membenarkan rayuan:

Boleh dibuat kesimpulan bahawa mengikut undang-undang, benefisiari atas kematian tak berwasiat tidak mempunyai kepentingan atau harta dalam harta pusaka peribadi si mati sehingga pentadbiran harta pusaka si mati telah lengkap dan pembahagian dibuat mengikut undang-undang pembahagian harta pusaka tak berwasiat.

Memandangkan keadaan keseluruhan kes, adalah jelas bahawa pada tarikh pelaksanaan perjanjian jual beli tersebut, pentadbiran harta pusaka si mati belum lengkap. Ekoran dari itu, sehingga harta pusakanya telah ditadbirkan dengan lengkap oleh pentadbir dan pembahagian dibuat mengikut undang-undang, benefisiari-benefisiari tidak mempunyai kepentingan atau harta dalam harta pusaka si mati yang memberikan mereka apa-apa hakmilik ke atas tanah tersebut. Oleh itu, benefisiari-benefisiari tidak mungkin telah mewaadkan untuk memindahkan apa-apa hakmilik kepada penentang. Sebagai akibatnya, penentang tidak boleh bergantung kepada perjanjian jual beli tersebut

untuk menjustifikasikan status mereka sebagai 'orang yang terkilan' di bawah s 327 Kanun tersebut. Atas sebab-sebab di atas, penentang tidak memuaskan mahkamah bahawa terdapat alasan-alasan yang mencukupi dalam undang-undang atau fakta untuk menganggap mereka sebagai orang yang menuntut kepentingan dalam tanah tersebut yang menjadikan, jika dibuktikan, mereka terkilan dengan kewujudan kaveat itu (lihat ms 196B dan 197F–H); *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 diikut.]

Notes

For cases on administration, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1649–1726.

For cases on sale of land, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2435–2819.

For cases on caveats, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2241–2419.

Cases referred to

Corbett v Commissioners of Inland Revenue [1938] 1 KB 567 (refd)

Dr Barnardo's Homes National Incorporated Association v Commissioners For Special Purposes of the Income Tax Acts [1921] 2 AC 1 (refd)

Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (folld)

Khoo Teng Seong v Khoo Teng Peng [1990] 3 MLJ 37 (refd)

Lord Sudeley & Ors v The Attorney-General [1897] AC 11 (refd)

Oh Phaik Lin & Ors v Choong Lye Hock Estate Sdn Bhd & Ors [1986] 1 MLJ 317 (refd)

Tan Heng Poh v Tan Boon Thong & Ors [1992] 2 MLJ 1 (refd)

Legislation referred to

National Land Code 1965 ss 323, 327

Appeal from: Originating Summons No 24–201 of 1992 (High Court, Penang)

N Chandran (*Jannu bte Babjan* with him) (*Lim Cheng Poh, Lim & Rahim*) for the appellant.

RR Sethu (*R Rajasingam* with him) (*Rajasingam & Co*) for the respondents.

Cur Adv Vult

Mohamed Dzaiddin FCJ (delivering the judgment of the court): This appeal arose from the decision of the High Court, Pulau Pinang given on 18 June 1993 granting the respondents' application under s 327 of the National Land Code 1965 ('the Code'), for the removal of Private Caveat No 5040/91 Jilid 282 folio 72 ('the caveat') entered by the appellant on the register documents of title in respect of two pieces of land held under

Grant First Grade Nos 4661 and 5650 for Lots No 1457 and 1835 Mukim 13, North East District, Pulau Pinang ('the lands'). A

The appeal was against the finding of the learned judge that the respondents were 'person aggrieved' within the meaning of s 327 of the Code, and therefore could apply for the removal of the caveat.

B

Factual background

The application for the removal of the caveat originated from an agreement dated 4 January 1943 ('the 1943 agreement') made between Chor Bah Say, deceased, and Choong Lye Hock Estate Ltd, later converted to Choong Lye Hock Estate Sdn Bhd ('the company'). The material terms of C the 1943 agreement are as follows:

(1) The said Chor Bah Say shall without remuneration be in management of the said Otaheite Estate (later known as Ayer Itam Estate) and shall collect all the income, rents and profits thereof and account for the same to the company whenever required to do so. D

(2) The said Chor Bah Say shall sell such part or parts of the said Otaheite Estate as he shall deem fit but he must first obtain the written consent of the company for each such sale; the company to be at liberty to refuse such consent if they consider the price or prices inadequate. E

(3) All moneys to be obtained from the sale or sales of part or all of the said Otaheite Estate shall be paid to the company and shall be applied together with the nett income, rents and profits thereof (after deducting certain specified interest payments, expenses and costs).

(4) The balance money shall be divided as to three-fourths thereof to the F said Chor Bah Say and as to the remaining one-fourth thereof to the company.

(5) The agreement shall be deemed to commence and take effect on 1 January 1943.

(6) The said 'Chor Bah Say' shall mean and include his personal G representative and the term 'the company' shall include their assigns.

All the lands comprised in the said Ayer Itam Estate were registered in the name of the company as proprietor. Although no trusts were endorsed on the titles, the company held 25% of the lands for itself and 75% for the estate of Chor Bah Say, who died intestate on 9 November 1949. He was H survived by his widow, Oh Kee Lee @ Oh Phaik Sim and several children. Upon his death, his interest under the 1943 agreement devolved to and became vested in his estate. Letters of Administration of his estate were granted to two of the deceased's children. In the events which had transpired, the majority of his beneficiaries also died, resulting in their I estates becoming the beneficiaries of Chor Bah Say's estate. The appellant and her sister, Chor Phaik Sim are the remaining direct beneficiaries of the Chor Bah Say's estate.

By two sale and purchase agreements dated 23 January 1992 ('the sale agreements') made between the company and the executors and trustees of the beneficiaries of the estate of Chor Bah Say on the one part as vendors, and the respondents as purchasers on the other part, the former agreed to sell the lands to the latter for RM32,006,000. The appellant and her sister, Chor Phaik Sim, were parties to the sale agreements, but as observed by the learned judge, they seemed to have baulked at a later stage and refused to execute the sale agreements on the ground that they did not agree on the price. In the appellant's statutory declaration filed in support of her application for entry of the caveat under s 323 of the Code, she clearly stated that she had not agreed to the purchase price of RM32,006,000. She also alleged that the purported sale contravened the 1943 agreement. Hence, on 26 October 1991, the appellant entered the caveat caveating the whole of the lands.

On 17 March 1992, the respondents applied to the Penang High Court for the removal of the caveat under s 327 of the Code. The application was supported by an affidavit of Lim Yoke Kwai, the respondents' executive director, who deposed that the respondents were the purchasers of the lands. He was advised and verily believed that by virtue of the sale agreements, the respondents were 'persons aggrieved' within the meaning of s 327 of the Code and could apply to remove the caveat.

The judge's finding

The learned judge granted the respondents' application for the removal of the caveat. In his grounds of judgment dated 26 January 1994, he gave the following reasons (rekod rayuan tambahan D-809):

> Having considered the complete and elaborate submissions, oral as well as written, made on behalf of the parties by learned counsel, I was of the view that this application for an order to remove the private caveat entered at the instance of the respondent on the register document of title to the lands was well founded. I found myself in substantial agreement with the submissions made by learned counsel for the applicant.
>
> The respondent questioned the locus of the application to apply for the removal of the private caveat under s 327 of the Code. The applicant countered by questioning the capacity of the respondent to enter the caveat under ss 322 and 323 of the Code. In these circumstances, the onus lay upon the applicant first to prove that it came within the ambit of s 327(1) of the Code as a person aggrieved by the existence of the caveat to apply for its removal. The applicant would be a person aggrieved if it could show that it had an interest in the lands which were caveated. That interest depended upon the validity of the agreements entered into and set out in material respects in the earlier part of this judgment. The agreements were severable and enforceable at the option of the applicant against each of the vendors individually ... .

His Lordship concluded at p 811:

Had the caveat not been entered, the parties to the agreements (including the applicant) would have completed the performance of the agreements. The refusal of the respondent and her sister, Chor Phaik Sim, to be parties to the agreements cannot in any way take away the right of the other beneficiaries to enter into the agreements in respect of their own interest in the estate of the deceased.

I found that the applicant was indeed a person aggrieved by the entry of the caveat in respect of the lands and therefore was in possession of the necessary capacity to apply for an order for its removal. In the circumstances, I made an order in terms of the application herein which included an order for the assessment of damages by the senior assistant registrar as it was evident that the applicant had been prejudiced by the entry of the caveat.

Submissions

Before us, En Chandran, for the appellant, challenged the correctness of the learned judge's finding on a number of grounds. However, his main ground was on the validity of the sale agreements. Counsel submitted that the respondents could not rely on the sale agreements to justify their status as an aggrieved party under s 327 of the Code for the following reasons. At the outset, he stated that it was not disputed that the estate of Chor Bah Say was unadministered at the date of the sale agreements, and the parties recognized that his beneficiaries were beneficial owners of ¾ undivided share of the lands. He submitted that in law, a beneficiary of an unadministered estate of a deceased person has no title or interest in the property of the deceased person before administration is completed. Based on this proposition, he argued that so long as the estate of Chor Bah Say, deceased, remained unadministered, the beneficiaries did not have and could not acquire any title to the ¾ undivided shares of the lands at the date of the sale agreements and such being the case, the beneficiaries of the deceased's estate could not have covenanted to convey such title to the respondents under the sale agreements. It followed that the sale agreements relied upon by the respondents have no validity. For his proposition of law, he relied on the House of Lords decisions in *Lord Sudeley & Ors v The Attorney-General* [1897] AC 11, *Dr Barnardo's Homes National Incorporated Association v Commissioners For Special Purposes of the Income Tax Acts* [1921] 2 AC 1 and *Corbett v Commissioners of Inland Revenue* [1938] 1 KB 567 which decided that a beneficiary has no interest or title in the property of a testator until his personal estate has been fully administered. According to En Chandran, this principle equally applied to a case of intestacy.

Counsel, however, made one qualification that the above cases did not deal with the right of a beneficiary of an unadministrated estate to enter a private caveat under the Torrens system applicable to Malaysia. This qualification was important in view of two local decisions in *Khoo Teng Seong v Khoo Teng Peng* [1990] 3 MLJ 37 and *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1, which dealt, inter alia, with the right of a beneficiary of an unadministered estate to enter a private caveat.

Encik Sethu, for the respondent, agreed that in law, a beneficiary of an unadministered estate has no title in any property of the testator until

A the residue has been ascertained and the estate administered as a correct proposition of the law. However, the issue in the present appeal related to the right of a beneficiary under intestacy, where Chor Bah Say, deceased, died intestate. Counsel submitted that the concept of a residuary beneficiary was limited to the estate of a testate deceased, and did not apply to a B beneficiary on intestacy where the interest of a beneficiary of an intestate estate was pre-determined by law. He added that being beneficiaries of the estate of an intestate, their rights were ascertained and they could sell their rights in the estate. Counsel, however, did not furnish any authority to support this proposition.

C *Legal proposition*

It must be observed at the outset that there is no clear authority for the proposition that a beneficiary under an intestacy has no interest in the property of a deceased person until the estate has been fully administered. In our view, however, there is much persuasive force in what is stated in D the textbook on *The Law and Practice of Intestate Succession* by CH Sherrin and Bonehill. At p 93, the learned authors opined as follows:

> Questions accordingly arise as to the nature of the beneficiary's interest under an intestacy during the course of administration. Has he, for instance, an interest which is capable of being bequeathed by his will or of being E disclaimed?
>
> There is considerable authority on this point and the answer to the questions posed are to be found in the House of Lords decisions in *Lord Sudeley v The Attorney General* [1987] AC 11 and *Dr Barnado's Homes National Incorporated Association v Commissioners For Special Purposes of the Income Tax Acts* [1921] AC 1 and in the Privy Council decision in F *Commissioner of Stamp Duties (Queensland) v Livingston* [1965] AC 694. *Although these cases were all concerned with testate succession, the principles stated are usually regarded as being applicable equally to the nature of a beneficiary's right on intestacy.* The basic principle appears from the *Barnado*'s case, where it was clearly stated:
>
> G 'When the personal estate of a testator has been fully administered by his executors and the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred and paid to him: but until that time, he has no property in any specific investment forming part of the estate or in the income from any such investment, and both corpus and income are the property of the executors and are applicable by them as a mixed fund for the H purposes of administration.' (Emphasis added.)

We would also refer to a passage in *Executors, Administrators and Probate* (17th Ed, 1993) by Williams, Mortimer and Sunnecks which stated at p 1050:

I > A residuary legatee has no interest in a defined part of the estate until the residue is ascertained, nor can income be ascribed to unascertained residue. *His right, which is of course transmissible, is to have the estate properly administered and applied for his benefit when the administration is complete. The right of a*

beneficiary claiming on a total intestacy is similar, except that he takes under a statutory trust for sale and conversion. (Emphasis added.)

Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law, a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

Conclusion

Having decided on the principal legal issue, it is left for us to examine the factual situation to see if the estate of Chor Bah Say has been fully administered at the time of the execution of the sale agreements.

We need first to look at the 1943 agreement. It is clear to us that the said agreement dealt with the payment of income from the proceeds of sale of such part or parts of the Ayer Itam Estate. However, it is common ground between counsel that arising from the said agreement, Chor Bah Say had ¾ undivided share in the Ayer Itam Estate, which included the lands.

Upon his death, letters of administration of his estate were first granted to his son and daughter on 13 December 1949 and by a further court order of 19 March 1954, the appellant became one of the administrators and together with the company, they continued to implement the terms of the 1943 Agreement. As we have noted earlier, during the course of the administration of the deceased's estate, the majority of his beneficiaries had also died leaving their respective estates as beneficiaries of the Estate of Chor Bah Say. Upon reading the Penang High Court judgment in *Oh Phaik Lin & Ors v Choong Lye Hock Estate Sdn Bhd & Ors* [1986] 1 MLJ 317, a case directly involving the administration of the estate of Chor Bah Say, it would appear that his beneficiaries faced considerable problems in administering his estate. Thus far, there seemed to be no evidence that the administrators have wound up his estate.

We move next to examine some of the clauses of the sale agreements. The relevant preambles, inter alia, state:

> Whereas the second, third, fourth, fifth, sixth, seventh, eighth and ninth vendors are the beneficiaries of the estate of Chor Bah Say @ Chor Bar Say, deceased, and are entitled to the beneficial ownership of the remaining ¾ undivided share of the lands in the respective proportions set out in Schedule B hereto.
>
> Whereas the first, second, third, fourth, fifth, sixth, seventh and ninth vendors have agreed to sell all their rights, title and interest of *their respective shares in the lands* to the purchaser and the purchaser has agreed to purchase their rights, title and interest in the lands excluding the portions set out in Schedule D hereto ('the lands') upon the terms and conditions hereinafter appearing.

A Whereas the eighth vendor has agreed to sell all its rights title and interest of *its share in the lands* subject to the approval of the High Court and the purchaser has agreed to purchase *the eighth vendor's title, interest and share in the lands* upon the terms and conditions hereinafter appearing. (Emphasis added.)

B From the above clauses, it is envisaged that the beneficiaries are entitled to the beneficial ownership of the ¾ *undivided* share of the estate of Chor Bah Say in the Ayer Itam Estate and that they have agreed to sell their rights title and interest of their respective shares in the lands which formed part of the Ayer Item Estate to the respondents as set out in the Schedule thereto.

C

It is interesting to note from Schedule B to the sale agreements that the respective interest of the beneficial owners in the lands is stated to be 7.1428571% (except the widow having 25%). This apportionment of the beneficial interest appears to give the impression that the administration of the estate of Chor Bah Say has been completed. Indeed, on the basis of the

D respective divisible interests of the beneficiaries, counsel for the respondents had contended that the appellant and other beneficiaries of the estate of Chor Bah Say were entitled to sell their respective interests in the lands to the respondents because what they purported to do under the sale agreements was to sell their own rights and interests as beneficiaries. In

E our view, in the absence of clear evidence that the estate of Chor Bah Say has been fully administered, the respective interests of the beneficiaries referred to in Schedule B must refer to their beneficial interest in the undivided ¾ share of the estate of Chor Bah Say in the Ayer Itam Estate.

Having regard to the above observation and the circumstances of the

F whole case, we are satisfied that at the date of the execution of the sale agreements, the administration of the estate of Chor Bah Say has not been completed. It follows that until his estate has been fully administered by the administrators and distribution made according to law, the beneficiaries have no interest or property in the estate of Chor Bah Say so as to give

G them any title to the lands. Here, we agree with counsel for the appellant that the beneficiaries of his estate, being vendors of the lands under the sale agreements could not have covenanted to convey any title to the respondents. In the result, the respondents cannot rely on the sale agreements to justify their status as 'person aggrieved' under s 327 of the

H Code. For the above reasons, we are of the opinion that the respondents have not satisfied us that there are sufficient grounds in law or fact for treating them as persons claiming an interest in the lands as would, if it were established, make them aggrieved by the existence of the caveat (*Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 at p 215).

I In the light of the above conclusion, we would allow this appeal with costs here and below. Deposit will be refunded to the appellant. The order of the learned judge dated 18 June 1993 is hereby set aside and the caveat restored.

We are now prepared to hear submissions from counsel, if they so wish, as to any consequential orders we should make with regard to other sale transactions between the respondents and the beneficiaries of the estate of Chor Bah Say regarding the remaining lots in the Ayer Itam Estate.

Appeal allowed.

Reported by Jafisah Jaafar